APPENDIX "A"

(Constitutional Law and Statutory Provisions Cited and Quoted)

CONSTITUTIONAL LAW INVOLVED

U. S. Constitution. Fourteenth (XIV) Admendment, Sec. 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**"

STATUTES INVOLVED

Florida Statute Section 794.01, RAPE AND FORCIBLE CARNAL KNOWLEDGE; penalty.

> **"95. (794.01) RAPE AND FORCIBLE CARNAL KNOWLEDGE; PENALTY.—Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully or carnally knows and abuses a female child under the age of ten years, shall be punished by death, unless a majority of the jury in their verdict recommend mercy, in which event punishment shall be by imprisonment in the state prison for life, or for any term of years within the discretion of the judge. It shall not be necessary to prove the actual emission of seed, but the crime shall be deemed complete upon penetration only."**

on 919.23, RECOMMENDATION TO

minal trials, the jury, in addition
uilty of any offense, may recom-
to the mercy of the court or to
y, and such recommendation shall
he verdict except in capital cases.
urt shall award the sentence and
shment or penalty prescribed by

APPENDIX "B"

ES COURT OF APPEALS

The Fifth Circuit

A ex rel JIMMIE LEE THOMAS

Appellant,

versus

ector of the Division of Corrections
orida, and AL. CAHILL, Sheriff of
ida,

Appellees

ited States District Court for the
n District of Florida

April 2, 1958.)

. Chief Judge, and BORAH and
E. Circuit Judges.

s an appeal from the denial by trial
s corpus. Appellant, a Negro, stands
f a white woman, and is sentenced
State of Florida by reason of a ver-
recommendation of mercy.* Appell-
ented his appeal to the State Su-

preme Court and sought certiorari of the United States Supreme Court, which was denied, 35 U.S. 925. In such appeals he urged the constitutional grounds for relief here asserted.

Appellant attacks the actions of the State of Florida which produced his conviction and sentence as being violative of his rights under the Fourteenth Admendment to Constitution of the United States. He specifies that the rape statute gives to the jury the uncontrolled and unfettered power to impose the death sentence on some and not impose it on others found guilty of the same crime; that this power has been used by the juries in Florida to discriminate against Negroes convicted of rape as a class and on account of their race in that they do not in fact condemn Negroes to death for rape but do not treat white persons convicted of the same offense in the same manner. He produces statisics to the effect that during a period of approximately 20 years, 24 Negroes have been executed for rape and no white person have been so executed.

The statute is obviously not unconstitutional on its face. Nearly all the states and the federal government have statutes which authorize jury recommendation or jury fixing of punishment in capital cases. For an extensive discussion of this subject see **Andres v. United States of America,** 333 U.S. 740. In light of the inviolability of the jury room, and in view of the uncontrolled character of the determinations that are confided to the jury,* the trial court could not find that the statute here is unconstitutional in its application either to Negroes generally or to this appellant. Its judgement must therefore be

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*—See Florida Statute Sec. 794.01 cited in Appendix A

**—See Florida Statutes Sec. 919.23, cited in Appendix A.

JUDGEMENT

Extract from the Minutes of April 2, 1958

STATE OF FLORIDA. ex rel JIMMIE LEE THOMAS

No. 17010. **versus**

R. O. CULVER, as Director of the Division of Corrections of the State of Florida, and AL CAHILL. Sheriff of Duval County. Florida.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgement of the said District Court in this cause be, and the same is hereby, affirmed.